

AMENDED IN ASSEMBLY JUNE 23, 2005

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 1107

Introduced by Committee on Public Safety (Senators Alquist (Chair), Cedillo, Margett, Migden, Perata, Poochigian, and Romero)

March 7, 2005

~~An act to amend Sections 679.05, 1524, 11105, 11167, and 11170 of, and to repeal Section 3085.1 of, the Penal Code, relating to public safety.~~ *An act to amend Section 48906 of the Education Code, to amend Sections 241.4, 271.5, 290.4, 601, 679.05, 861.5, 1170.11, 1170.76, 1170.86, 1524, 3602, 3700.5, 11105, 11167, 11170, 12555, and 13851 of, and to repeal Section 3085.1 of, the Penal Code, and to amend Sections 13353, 14601.2, 22358.4, and 23593 of the Vehicle Code, relating to public safety.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1107, as amended, Committee on Public Safety. Public safety: omnibus bill.

Existing law generally regulates public safety.

This bill would make various technical, nonsubstantive changes to provisions related to, *among other things*, domestic violence, summary criminal history information, and child abuse reporting.

Existing law provides that the presiding judge of the superior court in Contra Costa County may appoint an alternate for the public member on the county board of parole commissioners.

This bill would repeal that provision.

Existing law identifies certain persons as mandated reporters of child abuse and neglect, and requires their reports to law enforcement

to contain specified information, including the name of the child victim, and to include additional information if it is known.

This bill would provide that the name of the child shall be included if it is known.

Existing law provides that the Department of Justice shall maintain an index of all reports of child abuse and severe neglect it receives. Existing law provides that the department may charge a fee whenever this information is furnished to specified persons or entities as the result of an application for employment or licensing.

This bill would provide that the department may charge this fee when furnishing this information to a government agency conducting a background investigation of a person seeking employment as a peace officer.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 48906 of the Education Code is
2 amended to read:
3 48906. When a principal or other school official releases a
4 minor pupil to a peace officer for the purpose of removing the
5 minor from the school premises, the school official shall take
6 immediate steps to notify the parent, guardian, or responsible
7 relative of the minor regarding the release of the minor to the
8 officer, and regarding the place to which the minor is reportedly
9 being taken, except when a minor has been taken into custody as
10 a victim of suspected child abuse, as defined in Section ~~11165~~
11 ~~11165.6~~ of the Penal Code, or pursuant to Section 305 of the
12 Welfare and Institutions Code. In those cases, the school official
13 shall provide the peace officer with the address and telephone
14 number of the minor's parent or guardian. The peace officer shall
15 take immediate steps to notify the parent, guardian, or
16 responsible relative of the minor that the minor is in custody and
17 the place where he or she is being held. If the officer has a
18 reasonable belief that the minor would be endangered by a
19 disclosure of the place where the minor is being held, or that the
20 disclosure would cause the custody of the minor to be disturbed,
21 the officer may refuse to disclose the place where the minor is
22 being held for a period not to exceed 24 hours. The officer shall,

1 however, inform the parent, guardian, or responsible relative
2 whether the child requires and is receiving medical or other
3 treatment. The juvenile court shall review any decision not to
4 disclose the place where the minor is being held at a subsequent
5 detention hearing.

6 *SEC. 2. Section 241.4 of the Penal Code is amended to read:*

7 241.4. An assault is punishable by fine not exceeding one
8 thousand dollars (\$1,000), or by imprisonment in the county jail
9 not exceeding six months, or by both. When the assault is
10 committed against the person of a peace officer engaged in the
11 performance of his or her duties as a member of a police
12 department of a school district pursuant to Section ~~39670~~ 38000
13 of the Education Code, and the person committing the offense
14 knows or reasonably should know that the victim is a peace
15 officer engaged in the performance of his or her duties, the
16 offense shall be punished by imprisonment in the county jail not
17 exceeding one year or by imprisonment in the state prison.

18 *SEC. 3. Section 271.5 of the Penal Code is amended to read:*

19 271.5. (a) No parent or other individual having lawful
20 custody of a minor child 72 hours old or younger may be
21 prosecuted for a violation of Section 270, 270.5, 271, or 271a if
22 he or she voluntarily surrenders physical custody of the child to
23 personnel on duty at a safe-surrender site.

24 (b) For purposes of this section, “safe-surrender site” has the
25 same meaning as defined in paragraph (1) of subdivision (a) of
26 Section 1255.7 of the Health and Safety Code.

27 (c) (1) For purposes of this section, “lawful custody” has the
28 same meaning as defined in subdivision ~~(k)~~ (j) of Section 1255.7
29 of the Health and Safety Code.

30 (2) For purposes of this section, “personnel” has the same
31 meaning as defined in paragraph (2) of subdivision (a) of Section
32 1255.7 of the Health and Safety Code.

33 (d) This section shall be repealed on January 1, 2006, unless a
34 later enacted statute extends or deletes that date.

35 *SEC. 4. Section 290.4 of the Penal Code is amended to read:*

36 290.4. (a) (1) The Department of Justice shall continually
37 compile information as described in paragraph (2) regarding any
38 person required to register under Section 290 for a conviction of
39 Section 207 or 209 committed with the intent to violate Section
40 261, 286, 288, 288a, or 289; Section 220, except assault to

1 commit mayhem; Section 243.4, provided that the offense is a
2 felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of
3 Section 261; Section 264.1; Section 266, provided that the
4 offense is a felony; Section 266c, provided that the offense is a
5 felony; Section 266j; Section 267; Section 269; paragraph (1) of
6 subdivision (b) of Section 286, provided that the offense is a
7 felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f),
8 (g), (i), (j), or (k) of Section 286; Section 288; ~~paragraph~~
9 *paragraph* (1) of subdivision (b) of Section 288a, provided that
10 the offense is a felony; paragraph (2) of subdivision (b), (c), (d),
11 (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision
12 (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the
13 offense is a felony; subdivision (i) or (j) of Section 289; Section
14 647.6; or the attempted commission of any of these offenses; or
15 the statutory predecessor of any of these offenses or any offense
16 which, if committed or attempted in this state, would have been
17 punishable as one or more of the offenses described in this
18 section. This requirement shall not be applied to a person whose
19 duty to register has been terminated pursuant to paragraph (5) of
20 subdivision (d) of Section 290, or to a person who has been
21 relieved of his or her duty to register under Section 290.5.

22 (2) The information shall be categorized by community of
23 residence and ZIP Code. The information shall include the names
24 and known aliases of the person, a photograph, a physical
25 description, gender, race, date of birth, the criminal history, and
26 the address, including ZIP Code, in which the person resides, and
27 any other information that the Department of Justice deems
28 relevant, not including information that would identify the
29 victim.

30 (3) The department shall operate a “900” telephone number
31 that members of the public may call and inquire whether a named
32 individual is listed among those described in this subdivision.
33 The caller shall furnish his or her first name, middle initial, and
34 last name. The department shall ascertain whether a named
35 person reasonably appears to be a person so listed and provide
36 the caller with the information described in paragraph (2), except
37 the department shall not disclose the name or address of a listed
38 person’s employer, or the street address or criminal history of a
39 person listed, except to disclose the ZIP Code area in which the
40 person resides and to describe the specific crimes for which the

1 registrant was required to register. The department shall decide
 2 whether the named person reasonably appears to be a person
 3 listed, based upon information from the caller providing
 4 information that shall include (A) an exact street address,
 5 including apartment number, social security number, California
 6 driver's license or identification number, or birth date along with
 7 additional information that may include any of the following:
 8 name, hair color, eye color, height, weight, distinctive markings,
 9 ethnicity; or (B) any combination of at least six of the
 10 above-listed characteristics if an exact birth date or address is not
 11 available. If three of the characteristics provided include
 12 ethnicity, hair color, and eye color, a seventh identifying
 13 characteristic shall be provided. Any information identifying the
 14 victim by name, birth date, address, or relation to the registrant
 15 shall be excluded by the department.

16 (4) (A) The department shall provide a CD-ROM or other
 17 electronic medium containing the information described in
 18 paragraph (2), except the name or address of a listed person's
 19 employer, or the listed person's street address and criminal
 20 history other than the specific crimes for which the person was
 21 required to register, for all persons described in paragraph (1) of
 22 subdivision (a), and shall update and distribute the CD-ROM or
 23 other electronic medium, to the sheriff's department in each
 24 county, municipal police departments of cities with a population
 25 of more than 200,000, and each law enforcement agency listed in
 26 subparagraph (I) of paragraph (1) of subdivision (b) of Section
 27 290.45, except that school district police departments may
 28 receive the information only upon request. These law
 29 enforcement agencies may obtain additional copies by
 30 purchasing a yearly subscription to the CD-ROM or other
 31 electronic medium from the Department of Justice for a yearly
 32 subscription fee. The Department of Justice, the sheriffs'
 33 departments, and the municipal police departments of cities with
 34 a population of more than 200,000 shall make, and the other law
 35 enforcement agencies may make, the CD-ROM or other
 36 electronic medium available for viewing by the public in
 37 accordance with the following: The agency may require that a
 38 person applying to view the CD-ROM or other electronic
 39 medium express an articulable purpose in order to have access
 40 thereto. The applicant shall provide identification in the form of

1 a California driver's license, California identification card, or
2 military identification card and orders with proof of permanent
3 assignment or attachment to a military command or vessel in
4 California, showing the applicant to be at least 18 years of age.
5 The applicant shall sign a statement, on a form provided by the
6 Department of Justice, stating that the applicant is not a
7 registered sex offender, that he or she understands the purpose of
8 the release of information is to allow members of the public to
9 protect themselves and their children from sex offenders, and he
10 or she understands it is unlawful to use information obtained
11 from the CD-ROM or other electronic medium to commit a
12 crime against any registrant or to engage in illegal discrimination
13 or harassment of any registrant. The signed statement shall be
14 maintained in a file in the designated law enforcement agency's
15 office. A person under 18 years of age may accompany an
16 applicant who is that person's parent or legal guardian for the
17 purpose of viewing the CD-ROM or other electronic medium.

18 (B) The records of persons requesting to view the CD-ROM or
19 other electronic medium are confidential, except that a copy of
20 the applications requesting to view the CD-ROM or other
21 electronic medium may be disclosed to law enforcement agencies
22 for law enforcement purposes.

23 (C) Any information identifying the victim by name, birth
24 date, address, or relationship to the registrant shall be excluded
25 from the CD-ROM or other electronic medium.

26 (5) (A) The income from the operation of the "900" telephone
27 number shall be deposited in the Sexual Predator Public
28 Information Account within the Department of Justice for the
29 purpose of the implementation of this section by the Department
30 of Justice, including all actual and reasonable costs related to
31 establishing and maintaining the information described in
32 subdivision (a) and the CD-ROM or other electronic medium
33 described in this subdivision.

34 (B) The moneys in the Sexual Predator Public Information
35 Account shall consist of income from the operation of the "900"
36 telephone number program authorized by this section, proceeds
37 of the loan made pursuant to Section 6 of the act adding this
38 section, and any other funds made available to the account by the
39 Legislature. Moneys in the account shall be available to the

1 Department of Justice upon appropriation by the Legislature for
2 the purpose specified in subparagraph (A).

3 (C) When the “900” telephone number is called, a preamble
4 shall be played before charges begin to accrue. The preamble
5 shall run at least the length of time required by federal law and
6 shall provide the following information:

7 (i) Notice that the caller’s telephone number will be recorded.

8 (ii) The charges for use of the “900” telephone number.

9 (iii) Notice that the caller is required to identify himself or
10 herself to the operator.

11 (iv) Notice that the caller is required to be 18 years of age or
12 older.

13 (v) A warning that it is illegal to use information obtained
14 through the “900” telephone number to commit a crime against
15 any registrant or to engage in illegal discrimination or harassment
16 against any registrant.

17 (vi) Notice that the caller is required to have the birth date,
18 California driver’s license or identification number, social
19 security number, address, or other identifying information
20 regarding the person about whom information is sought in order
21 to achieve a positive identification of that person.

22 (vii) A statement that the number is not a crime hotline and
23 that any suspected criminal activity should be reported to local
24 authorities.

25 (viii) A statement that the caller should have a reasonable
26 suspicion that a person is at risk.

27 (D) The Department of Justice shall expend no more than six
28 hundred thousand dollars (\$600,000) per year from any moneys
29 appropriated by the Legislature from the account.

30 (b) (1) Any person who uses information disclosed pursuant
31 to this section to commit a felony shall be punished, in addition
32 and consecutive to, any other punishment, by a five-year term of
33 imprisonment in the state prison.

34 (2) Any person who, without authorization, uses information
35 disclosed pursuant to this section to commit a misdemeanor shall
36 be subject to, in addition to any other penalty or fine imposed, a
37 fine of not less than five hundred dollars (\$500) and not more
38 than one thousand dollars (\$1,000).

39 (c) The record of the compilation of offender information on
40 each CD-ROM or other electronic medium distributed pursuant

1 to this section shall be used only for law enforcement purposes
2 and the public safety purposes specified in this section and
3 Sections 290 and 290.45. This record shall not be distributed or
4 removed from the custody of the law enforcement agency that is
5 authorized to retain it. Information obtained from this record
6 shall be disclosed to a member of the public only as provided in
7 this section, Section 290, 290.45, or any other statute expressly
8 authorizing it.

9 Any person who copies, distributes, discloses, or receives this
10 record or information from it, except as authorized by law, is
11 guilty of a misdemeanor, punishable by imprisonment in a
12 county jail not to exceed six months, or by a fine not exceeding
13 one thousand dollars (\$1,000), or by both that imprisonment and
14 fine. This subdivision shall not apply to a law enforcement
15 officer who makes a copy as part of his or her official duties in
16 the course of a criminal investigation, court case, or as otherwise
17 authorized by subdivision (b) of Section 290.45. This subdivision
18 shall not prohibit copying information by handwriting.

19 Notwithstanding Section 6254.5 of the Government Code,
20 disclosure of information pursuant to this section is not a waiver
21 of exemptions under Chapter 3.5 (commencing with Section
22 6250) of Title 1 of Division 7 of the Government Code and does
23 not affect other statutory restrictions on disclosure in other
24 situations.

25 (d) Unauthorized removal or destruction of the CD-ROM or
26 other electronic medium from the offices of any law enforcement
27 agency is a misdemeanor, punishable by imprisonment in a
28 county jail not to exceed one year, or by a fine not exceeding one
29 thousand dollars (\$1,000), or by both that imprisonment and fine.

30 (e) (1) A person is authorized to use information disclosed
31 pursuant to this section only to protect a person at risk.

32 This section shall not affect authorized access to, or use of,
33 information pursuant to, among other provisions, Sections 11105
34 and 11105.3 of this code, Section 226.55 of the Civil Code,
35 Sections 777.5 and 14409.2 of the Financial Code, Sections
36 1522.01 and 1596.871 of the Health and Safety Code, and
37 Section 432.7 of the Labor Code.

38 (2) Except as authorized under paragraph (1) or any other
39 provision of law, use of any information that is disclosed

1 pursuant to this section for purposes relating to any of the
2 following is prohibited:

3 (A) Health insurance.

4 (B) Insurance.

5 (C) Loans.

6 (D) Credit.

7 (E) Employment.

8 (F) Education, scholarships, or fellowships.

9 (G) Housing or accommodations.

10 (H) Benefits, privileges, or services provided by any business
11 establishment.

12 (3) (A) Any use of information disclosed pursuant to this
13 section for purposes other than those provided by paragraph (1)
14 or in violation of paragraph (2) shall make the user liable for the
15 actual damages, and any amount that may be determined by a
16 jury or a court sitting without a jury, not exceeding three times
17 the amount of actual damage, and not less than two hundred fifty
18 dollars (\$250), and attorney's fees, exemplary damages, or a civil
19 penalty not exceeding twenty-five thousand dollars (\$25,000).

20 (B) Whenever there is reasonable cause to believe that any
21 person or group of persons is engaged in a pattern or practice of
22 misuse of the "900" telephone number in violation of paragraph
23 (2), the Attorney General, any district attorney, or city attorney,
24 or any person aggrieved by the misuse of that number is
25 authorized to bring a civil action in the appropriate court
26 requesting preventive relief, including an application for a
27 permanent or temporary injunction, restraining order, or other
28 order against the person or group of persons responsible for the
29 pattern or practice of misuse. The foregoing remedies shall be
30 independent of any other remedies or procedures that may be
31 available to an aggrieved party under other provisions of law,
32 including Part 2 (commencing with Section 43) of Division 1 of
33 the Civil Code.

34 (f) This section shall not be deemed to authorize the
35 publication, distribution, or disclosure of the address of any
36 person about whom information can be published, distributed, or
37 disclosed pursuant to this section.

38 (g) Community notification shall be governed by Section
39 290.45.

(h) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, “law enforcement agency” means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(i) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in these sections, regardless of when it was committed.

(j) The Department of Justice shall mail an informational pamphlet to any member of the public who makes an inquiry using the “900” telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the “900” telephone number that they will receive the pamphlet, if an address is provided, shall be included in the preamble required by this section.

(k) On or before July 1, 2001, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(l) Agencies disseminating information to the public pursuant to this section shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years.

(m) This section shall remain operative only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

SEC. 5. Section 601 of the Penal Code is amended to read:

601. (a) Any person is guilty of trespass who makes a credible threat to cause serious bodily injury, as defined in

subdivision (a) of Section 417.6, to another person with the intent to place that other person in reasonable fear for his or her safety, or the safety of his or her immediate family, as defined in subdivision ~~(i)~~(l) of Section 646.9, and who does any of the following:

(1) Within 30 days of the threat, unlawfully enters into the residence or real property contiguous to the residence of the person threatened without lawful purpose, and with the intent to execute the threat against the target of the threat.

(2) Within 30 days of the threat, knowing that the place is the threatened person's workplace, unlawfully enters into the workplace of the person threatened and carries out an act or acts to locate the threatened person within the workplace premises without lawful purpose, and with the intent to execute the threat against the target of the threat.

(b) Subdivision (a) shall not apply if the residence, real property, or workplace described in paragraph (1) or (2) that is entered is the residence, real property, or workplace of the person making the threat.

(c) This section shall not apply to any person who is engaged in labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act.

(d) A violation of this section shall be punishable by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both a fine and imprisonment.

SECTION 1.—

SEC. 6. Section 679.05 of the Penal Code is amended to read:

679.05. (a) A victim of domestic violence or abuse, as defined in Sections 6203 or 6211 of the Family Code, or Section 13700 of the Penal Code, has the right to have a domestic violence counselor and a support person of the victim's choosing present at any interview by law enforcement authorities, prosecutors, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the prosecutor if the law enforcement authority or the prosecutor determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this

1 section, “domestic violence counselor” is defined in Section
2 1037.1 of the Evidence Code.

3 (b) (1) Prior to the commencement of the initial interview by
4 law enforcement authorities or the prosecutor pertaining to any
5 criminal action arising out of a domestic violence incident, a
6 victim of domestic violence or abuse, as defined in Section 6203
7 or 6211 of the Family Code, or Section 13700 of this code, shall
8 be notified orally or in writing by the attending law enforcement
9 authority or prosecutor that the victim has the right to have a
10 domestic violence counselor and a support person of the victim’s
11 choosing present at the interview or contact. This subdivision
12 applies to investigators and agents employed or retained by law
13 enforcement or the prosecutor.

14 (2) At the time the victim is advised of his or her rights
15 pursuant to paragraph (1), the attending law enforcement
16 authority or prosecutor shall also advise the victim of the right to
17 have a domestic violence counselor and a support person present
18 at any interview by the defense attorney or investigators or
19 agents employed by the defense attorney.

20 (c) An initial investigation by law enforcement to determine
21 whether a crime has been committed and the identity of the
22 suspects shall not constitute a law enforcement interview for
23 purposes of this section.

24 *SEC. 7. Section 861.5 of the Penal Code is amended to read:*

25 861.5. Notwithstanding subdivision (a) of Section 861, the
26 magistrate may postpone the preliminary examination for one
27 court day in order to accommodate the special physical, mental,
28 or emotional needs of a child witness who is 10 years of age or
29 younger or a dependent person, as defined in *paragraph (3) of*
30 *subdivision (h) of* Section 288.

31 The magistrate shall admonish both the prosecution and
32 defense against coaching the witness prior to the witness’ next
33 appearance in the preliminary examination.

34 *SEC. 8. Section 1170.11 of the Penal Code is amended to*
35 *read:*

36 1170.11. As used in Section 1170.1, the term “specific
37 enhancement” means an enhancement that relates to the
38 circumstances of the crime. It includes, but is not limited to, the
39 enhancements provided in Sections 186.10, 186.11, 186.22,
40 186.26, 186.33, 273.4, 289.5, 290.4, 290.45, *subdivision (h) of*

1 *Section 290.46, Sections 347, and 368, subdivisions (a); and (b);*
2 *and (e) of Section 422.75, paragraphs (2), (3), (4), and (5) of*
3 *subdivision (a) of Section 451.1, paragraphs (2), (3), and (4) of*
4 *subdivision (a) of Section 452.1, subdivision (g) of Section 550,*
5 *Sections 593a, 600, 667.8, 667.85, 667.9, 667.10, 667.15,*
6 *667.16, 667.17, 674, 675, 12021.5, 12022, 12022.2, 12022.3,*
7 *12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7,*
8 *12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and*
9 *12280 of this code, and in Sections 1522.01 and 11353.1,*
10 *subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5,*
11 *11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 25189.5, and*
12 *25189.7 of the Health and Safety Code, and in Sections 20001*
13 *and 23558 of the Vehicle Code, and in Sections 10980 and 14107*
14 *of the Welfare and Institutions Code.*

15 *SEC. 9. Section 1170.76 of the Penal Code is amended to*
16 *read:*

17 1170.76. The fact that a defendant who commits or attempts
18 to commit a violation of Section 243.4, 245, *or 273.5, or 273.55,*
19 is or has been a member of the household of a minor or of the
20 victim of the offense, or the defendant is a marital or blood
21 relative of the minor or the victim, or the defendant or the victim
22 is the natural parent, adoptive parent, stepparent, or foster parent
23 of the minor, and the offense contemporaneously occurred in the
24 presence of, or was witnessed by, the minor shall be considered a
25 circumstance in aggravation of the crime in imposing a term
26 under subdivision (b) of Section 1170.

27 *SEC. 10. Section 1170.86 of the Penal Code is amended to*
28 *read:*

29 1170.86. Upon conviction of a felony violation of Section
30 220, 261, 261.5, 264.1, *or 266j, or 269,* the fact that the felony
31 was committed within a safe school zone, as defined in
32 subdivision (c) of Section 626, against a victim who was a pupil
33 currently attending school, shall be considered a circumstance in
34 aggravation in imposing a term under subdivision (b) of Section
35 1170.

36 *SEC. 11. Section 1170.89 of the Penal Code is amended to*
37 *read:*

38 1170.89. Where there is an applicable triad for an
39 enhancement related to the possession of, being armed with, use
40 of, or furnishing or supplying a firearm, set forth in Section

1 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, *or*
2 12022.55, ~~or 12280~~, the fact that a person knew or had reason to
3 believe that a firearm was stolen shall constitute a circumstance
4 in aggravation of the enhancement justifying imposition of the
5 upper term on that enhancement.

6 ~~SEC. 2.—~~

7 *SEC. 12.* Section 1524 of the Penal Code, as amended by
8 Section 8 of Chapter 2 of the 4th Extraordinary Session of the
9 Statutes of 2004, is amended to read:

10 1524. (a) A search warrant may be issued upon any of the
11 following grounds:

12 (1) When the property was stolen or embezzled.

13 (2) When the property or things were used as the means of
14 committing a felony.

15 (3) When the property or things are in the possession of any
16 person with the intent to use them as a means of committing a
17 public offense, or in the possession of another to whom he or she
18 may have delivered them for the purpose of concealing them or
19 preventing their being discovered.

20 (4) When the property or things to be seized consist of any
21 item or constitute any evidence that tends to show a felony has
22 been committed, or tends to show that a particular person has
23 committed a felony.

24 (5) When the property or things to be seized consist of
25 evidence that tends to show that sexual exploitation of a child, in
26 violation of Section 311.3, or possession of matter depicting
27 sexual conduct of a person under the age of 18 years, in violation
28 of Section 311.11, has occurred or is occurring.

29 (6) When there is a warrant to arrest a person.

30 (7) When a provider of electronic communication service or
31 remote computing service has records or evidence, as specified in
32 Section 1524.3, showing that property was stolen or embezzled
33 constituting a misdemeanor, or that property or things are in the
34 possession of any person with the intent to use them as a means
35 of committing a misdemeanor public offense, or in the
36 possession of another to whom he or she may have delivered
37 them for the purpose of concealing them or preventing their
38 discovery.

39 (8) When the property or things to be seized include an item or
40 any evidence that tends to show a violation of Section 3700.5 of

1 the Labor Code, or tends to show that a particular person has
2 violated Section 3700.5 of the Labor Code.

3 (b) The property or things or person or persons described in
4 subdivision (a) may be taken on the warrant from any place, or
5 from any person in whose possession the property or things may
6 be.

7 (c) Notwithstanding subdivision (a) or (b), no search warrant
8 shall issue for any documentary evidence in the possession or
9 under the control of any person, who is a lawyer as defined in
10 Section 950 of the Evidence Code, a physician as defined in
11 Section 990 of the Evidence Code, a psychotherapist as defined
12 in Section 1010 of the Evidence Code, or a member of the clergy
13 as defined in Section 1030 of the Evidence Code, and who is not
14 reasonably suspected of engaging or having engaged in criminal
15 activity related to the documentary evidence for which a warrant
16 is requested unless the following procedure has been complied
17 with:

18 (1) At the time of the issuance of the warrant the court shall
19 appoint a special master in accordance with subdivision (d) to
20 accompany the person who will serve the warrant. Upon service
21 of the warrant, the special master shall inform the party served of
22 the specific items being sought and that the party shall have the
23 opportunity to provide the items requested. If the party, in the
24 judgment of the special master, fails to provide the items
25 requested, the special master shall conduct a search for the items
26 in the areas indicated in the search warrant.

27 (2) If the party who has been served states that an item or
28 items should not be disclosed, they shall be sealed by the special
29 master and taken to court for a hearing.

30 At the hearing, the party searched shall be entitled to raise any
31 issues that may be raised pursuant to Section 1538.5 as well as a
32 claim that the item or items are privileged, as provided by law.
33 The hearing shall be held in the superior court. The court shall
34 provide sufficient time for the parties to obtain counsel and make
35 any motions or present any evidence. The hearing shall be held
36 within three days of the service of the warrant unless the court
37 makes a finding that the expedited hearing is impracticable. In
38 that case the matter shall be heard at the earliest possible time.

39 If an item or items are taken to court for a hearing, any
40 limitations of time prescribed in Chapter 2 (commencing with

1 Section~~797~~ 799) of Title 3 of Part 2 shall be tolled from the
2 time of the seizure until the final conclusion of the hearing,
3 including any associated writ or appellate proceedings.

4 (3) The warrant shall, whenever practicable, be served during
5 normal business hours. In addition, the warrant shall be served
6 upon a party who appears to have possession or control of the
7 items sought. If, after reasonable efforts, the party serving the
8 warrant is unable to locate the person, the special master shall
9 seal and return to the court, for determination by the court, any
10 item that appears to be privileged as provided by law.

11 (d) As used in this section, a “special master” is an attorney
12 who is a member in good standing of the California State Bar and
13 who has been selected from a list of qualified attorneys that is
14 maintained by the State Bar particularly for the purposes of
15 conducting the searches described in this section. These attorneys
16 shall serve without compensation. A special master shall be
17 considered a public employee, and the governmental entity that
18 caused the search warrant to be issued shall be considered the
19 employer of the special master and the applicable public entity,
20 for purposes of Division 3.6 (commencing with Section 810) of
21 Title 1 of the Government Code, relating to claims and actions
22 against public entities and public employees. In selecting the
23 special master, the court shall make every reasonable effort to
24 ensure that the person selected has no relationship with any of the
25 parties involved in the pending matter. Any information obtained
26 by the special master shall be confidential and may not be
27 divulged except in direct response to inquiry by the court.

28 In any case in which the magistrate determines that, after
29 reasonable efforts have been made to obtain a special master, a
30 special master is not available and would not be available within
31 a reasonable period of time, the magistrate may direct the party
32 seeking the order to conduct the search in the manner described
33 in this section in lieu of the special master.

34 (e) Any search conducted pursuant to this section by a special
35 master may be conducted in a manner that permits the party
36 serving the warrant or his or her designee to accompany the
37 special master as he or she conducts his or her search. However,
38 that party or his or her designee may not participate in the search
39 nor shall he or she examine any of the items being searched by

1 the special master except upon agreement of the party upon
2 whom the warrant has been served.

3 (f) As used in this section, “documentary evidence” includes,
4 but is not limited to, writings, documents, blueprints, drawings,
5 photographs, computer printouts, microfilms, X-rays, files,
6 diagrams, ledgers, books, tapes, audio and video recordings,
7 films or papers of any type or description.

8 (g) No warrant shall issue for any item or items described in
9 Section 1070 of the Evidence Code.

10 (h) Notwithstanding any other law, no claim of attorney work
11 product as described in Chapter 4 (commencing with Section
12 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure
13 shall be sustained where there is probable cause to believe that
14 the lawyer is engaging or has engaged in criminal activity related
15 to the documentary evidence for which a warrant is requested
16 unless it is established at the hearing with respect to the
17 documentary evidence seized under the warrant that the services
18 of the lawyer were not sought or obtained to enable or aid anyone
19 to commit or plan to commit a crime or a fraud.

20 (i) Nothing in this section is intended to limit an attorney’s
21 ability to request an in camera hearing pursuant to the holding of
22 the Supreme Court of California in *People v. Superior Court*
23 *(Laff)* (2001) 25 Cal.4th 703.

24 (j) In addition to any other circumstance permitting a
25 magistrate to issue a warrant for a person or property in another
26 county, when the property or things to be seized consist of any
27 item or constitute any evidence that tends to show a violation of
28 Section 530.5, the magistrate may issue a warrant to search a
29 person or property located in another county if the person whose
30 identifying information was taken or used resides in the same
31 county as the issuing court.

32 ~~SEC. 3.—~~

33 *SEC. 13.* Section 3085.1 of the Penal Code is repealed.

34 *SEC. 14.* *Section 3602 of the Penal Code is amended to read:*

35 3602. Upon the affirmance of her appeal, the female person
36 sentenced to death shall thereafter be delivered to the warden of
37 the California state prison designated by the department for the
38 execution of the death penalty, not earlier than three days before
39 the day upon which judgment is to be executed; provided,
40 however, that in the event of a commutation of sentence said

1 female prisoner shall be returned to the *Central* California
2 ~~Institution for Women~~ *Women's Facility*, there to be confined
3 pursuant to such commutation.

4 *SEC. 15. Section 3700.5 of the Penal Code is amended to*
5 *read:*

6 3700.5. Whenever a court makes and causes to be entered an
7 order appointing a day upon which a judgment of death shall be
8 executed upon a defendant, the warden of the state prison to
9 whom such defendant has been delivered for execution or, if the
10 defendant is a female, the warden of the *Central* California
11 ~~Institution for Women~~ *Women's Facility*, shall notify the
12 Director of Corrections who shall thereupon select and appoint
13 three alienists, all of whom must be from the medical staffs of the
14 Department of Corrections, to examine the defendant, under the
15 judgment of death, and investigate his or her sanity. It is the duty
16 of the alienists so selected and appointed to examine such
17 defendant and investigate his or her sanity, and to report their
18 opinions and conclusions thereon, in writing, to the Governor, to
19 the warden of the prison at which the execution is to take place,
20 *or, if the defendant is female, the warden of the Central*
21 *California Women's Facility*, at least 20 days prior to the day
22 appointed for the execution of the judgment of death upon the
23 defendant. The warden shall furnish a copy of the report to
24 counsel for the defendant upon his or her request.

25 ~~SEC. 4.—~~

26 *SEC. 16. Section 11105 of the Penal Code is amended to*
27 *read:*

28 11105. (a) (1) The Department of Justice shall maintain state
29 summary criminal history information.

30 (2) As used in this section:

31 (A) "State summary criminal history information" means the
32 master record of information compiled by the Attorney General
33 pertaining to the identification and criminal history of any
34 person, such as name, date of birth, physical description,
35 fingerprints, photographs, date of arrests, arresting agencies and
36 booking numbers, charges, dispositions, and similar data about
37 the person.

38 (B) "State summary criminal history information" does not
39 refer to records and data compiled by criminal justice agencies
40 other than the Attorney General, nor does it refer to records of

1 complaints to or investigations conducted by, or records of
2 intelligence information or security procedures of, the office of
3 the Attorney General and the Department of Justice.

4 (b) The Attorney General shall furnish state summary criminal
5 history information to any of the following, if needed in the
6 course of their duties, provided that when information is
7 furnished to assist an agency, officer, or official of state or local
8 government, a public utility, or any other entity, in fulfilling
9 employment, certification, or licensing duties, Chapter 1321 of
10 the Statutes of 1974 and Section 432.7 of the Labor Code shall
11 apply:

12 (1) The courts of the state.

13 (2) Peace officers of the state as defined in Section 830.1,
14 subdivisions (a) and (e) of Section 830.2, subdivision (a) of
15 Section 830.3, subdivisions (a) and (b) of Section 830.5, and
16 subdivision (a) of Section 830.31.

17 (3) District attorneys of the state.

18 (4) Prosecuting city attorneys of any city within the state.

19 (5) Probation officers of the state.

20 (6) Parole officers of the state.

21 (7) A public defender or attorney of record when representing
22 a person in proceedings upon a petition for a certificate of
23 rehabilitation and pardon pursuant to Section 4852.08.

24 (8) A public defender or attorney of record when representing
25 a person in a criminal case and if authorized access by statutory
26 or decisional law.

27 (9) Any agency, officer, or official of the state if the criminal
28 history information is required to implement a statute or
29 regulation that expressly refers to specific criminal conduct
30 applicable to the subject person of the state summary criminal
31 history information, and contains requirements or exclusions, or
32 both, expressly based upon that specified criminal conduct. The
33 agency, officer, or official of the state authorized by this
34 paragraph to receive state summary criminal history information
35 may also transmit fingerprint images and related information to
36 the Department of Justice to be transmitted to the Federal Bureau
37 of Investigation.

38 (10) Any city or county, or city and county, or district, or any
39 officer, or official thereof if access is needed in order to assist
40 that agency, officer, or official in fulfilling employment,

1 certification, or licensing duties, and if the access is specifically
2 authorized by the city council, board of supervisors, or governing
3 board of the city, county, or district if the criminal history
4 information is required to implement a statute, ordinance, or
5 regulation that expressly refers to specific criminal conduct
6 applicable to the subject person of the state summary criminal
7 history information, and contains requirements or exclusions, or
8 both, expressly based upon that specified criminal conduct. The
9 city or county, or city and county, or district, or the officer or
10 official thereof authorized by this paragraph may also transmit
11 fingerprint images and related information to the Department of
12 Justice to be transmitted to the Federal Bureau of Investigation.

13 (11) The subject of the state summary criminal history
14 information under procedures established under Article 5
15 (commencing with Section 11120) of Chapter 1 of Title 1 of Part
16 4.

17 (12) Any person or entity when access is expressly authorized
18 by statute if the criminal history information is required to
19 implement a statute or regulation that expressly refers to specific
20 criminal conduct applicable to the subject person of the state
21 summary criminal history information, and contains requirements
22 or exclusions, or both, expressly based upon that specified
23 criminal conduct.

24 (13) Health officers of a city, county, or city and county, or
25 district, when in the performance of their official duties enforcing
26 Section 120175 of the Health and Safety Code.

27 (14) Any managing or supervising correctional officer of a
28 county jail or other county correctional facility.

29 (15) Any humane society, or society for the prevention of
30 cruelty to animals, for the specific purpose of complying with
31 Section 14502 of the Corporations Code for the appointment of
32 level 1 humane officers.

33 (16) Local child support agencies established by Section
34 17304 of the Family Code. When a local child support agency
35 closes a support enforcement case containing summary criminal
36 history information, the agency shall delete or purge from the file
37 and destroy any documents or information concerning or arising
38 from offenses for or of which the parent has been arrested,
39 charged, or convicted, other than for offenses related to the
40 parent's having failed to provide support for minor children,

1 consistent with the requirements of Section 17531 of the Family
2 Code.

3 (17) County child welfare agency personnel who have been
4 delegated the authority of county probation officers to access
5 state summary criminal history information pursuant to Section
6 272 of the Welfare and Institutions Code for the purposes
7 specified in Section 16504.5 of the Welfare and Institutions
8 Code. Information from criminal history records provided
9 pursuant to this subdivision shall not be used for any purposes
10 other than those specified in this section and Section 16504.5 of
11 the Welfare and Institutions Code. When an agency obtains
12 records obtained both on the basis of name checks and
13 fingerprint checks, final placement decisions shall be based only
14 on the records obtained pursuant to the fingerprint check.

15 (c) The Attorney General may furnish state summary criminal
16 history information and, when specifically authorized by this
17 subdivision, federal level criminal history information upon a
18 showing of a compelling need to any of the following, provided
19 that when information is furnished to assist an agency, officer, or
20 official of state or local government, a public utility, or any other
21 entity, in fulfilling employment, certification, or licensing duties,
22 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
23 Labor Code shall apply:

24 (1) Any public utility as defined in Section 216 of the Public
25 Utilities Code that operates a nuclear energy facility when access
26 is needed in order to assist in employing persons to work at the
27 facility, provided that, if the Attorney General supplies the data,
28 he or she shall furnish a copy of the data to the person to whom
29 the data relates.

30 (2) To a peace officer of the state other than those included in
31 subdivision (b).

32 (3) To a peace officer of another country.

33 (4) To public officers (other than peace officers) of the United
34 States, other states, or possessions or territories of the United
35 States, provided that access to records similar to state summary
36 criminal history information is expressly authorized by a statute
37 of the United States, other states, or possessions or territories of
38 the United States if the information is needed for the
39 performance of their official duties.

1 (5) To any person when disclosure is requested by a probation,
2 parole, or peace officer with the consent of the subject of the
3 state summary criminal history information and for purposes of
4 furthering the rehabilitation of the subject.

5 (6) The courts of the United States, other states, or territories
6 or possessions of the United States.

7 (7) Peace officers of the United States, other states, or
8 territories or possessions of the United States.

9 (8) To any individual who is the subject of the record
10 requested if needed in conjunction with an application to enter
11 the United States or any foreign nation.

12 (9) (A) Any public utility as defined in Section 216 of the
13 Public Utilities Code, or any cable corporation as defined in
14 subparagraph (B), if receipt of criminal history information is
15 needed in order to assist in employing current or prospective
16 employees, contract employees, or subcontract employees who,
17 in the course of their employment may be seeking entrance to
18 private residences or adjacent grounds. The information provided
19 shall be limited to the record of convictions and any arrest for
20 which the person is released on bail or on his or her own
21 recognizance pending trial.

22 If the Attorney General supplies the data pursuant to this
23 paragraph, the Attorney General shall furnish a copy of the data
24 to the current or prospective employee to whom the data relates.

25 Any information obtained from the state summary criminal
26 history is confidential and the receiving public utility or cable
27 corporation shall not disclose its contents, other than for the
28 purpose for which it was acquired. The state summary criminal
29 history information in the possession of the public utility or cable
30 corporation and all copies made from it shall be destroyed not
31 more than 30 days after employment or promotion or transfer is
32 denied or granted, except for those cases where a current or
33 prospective employee is out on bail or on his or her own
34 recognizance pending trial, in which case the state summary
35 criminal history information and all copies shall be destroyed not
36 more than 30 days after the case is resolved.

37 A violation of this paragraph is a misdemeanor, and shall give
38 the current or prospective employee who is injured by the
39 violation a cause of action against the public utility or cable
40 corporation to recover damages proximately caused by the

violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped “no criminal record” and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the

1 inclusion of the information in the public record is authorized by
2 a court, statute, or decisional law.

3 (i) Notwithstanding any other law, the Department of Justice
4 or any state or local law enforcement agency may require the
5 submission of fingerprints for the purpose of conducting
6 summary criminal history information checks that are authorized
7 by law.

8 (j) The state summary criminal history information shall
9 include any finding of mental incompetence pursuant to Chapter
10 6 (commencing with Section 1367) of Title 10 of Part 2 arising
11 out of a complaint charging a felony offense specified in Section
12 290.

13 (k) (1) This subdivision shall apply whenever state or federal
14 summary criminal history information is furnished by the
15 Department of Justice as the result of an application by an
16 authorized agency or organization and the information is to be
17 used for peace officer employment or certification purposes. As
18 used in this subdivision, a peace officer is defined in Chapter 4.5
19 (commencing with Section 830) of Title 3 of Part 2.

20 (2) Notwithstanding any other provision of law, whenever
21 state summary criminal history information is furnished pursuant
22 to paragraph (1), the Department of Justice shall disseminate the
23 following information:

24 (A) Every conviction rendered against the applicant.

25 (B) Every arrest for an offense for which the applicant is
26 presently awaiting trial, whether the applicant is incarcerated or
27 has been released on bail or on his or her own recognizance
28 pending trial.

29 (C) Every arrest or detention, except for an arrest or detention
30 resulting in an exoneration, provided, however, that where the
31 records of the Department of Justice do not contain a disposition
32 for the arrest, the Department of Justice first makes a genuine
33 effort to determine the disposition of the arrest.

34 (D) Every successful diversion.

35 (l) (1) This subdivision shall apply whenever state or federal
36 summary criminal history information is furnished by the
37 Department of Justice as the result of an application by a criminal
38 justice agency or organization as defined in Section 13101 of the
39 Penal Code, and the information is to be used for criminal justice
40 employment, licensing, or certification purposes.

1 (2) Notwithstanding any other provision of law, whenever
2 state summary criminal history information is furnished pursuant
3 to paragraph (1), the Department of Justice shall disseminate the
4 following information:

5 (A) Every conviction rendered against the applicant.

6 (B) Every arrest for an offense for which the applicant is
7 presently awaiting trial, whether the applicant is incarcerated or
8 has been released on bail or on his or her own recognizance
9 pending trial.

10 (C) Every arrest for an offense for which the records of the
11 Department of Justice do not contain a disposition or did not
12 result in a conviction, provided that the Department of Justice
13 first makes a genuine effort to determine the disposition of the
14 arrest. However, information concerning an arrest shall not be
15 disclosed if the records of the Department of Justice indicate or if
16 the genuine effort reveals that the subject was exonerated,
17 successfully completed a diversion or deferred entry of judgment
18 program, or the arrest was deemed a detention.

19 (m) (1) This subdivision shall apply whenever state or federal
20 summary criminal history information is furnished by the
21 Department of Justice as the result of an application by an
22 authorized agency or organization pursuant to Section 1522,
23 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
24 any statute that incorporates the criteria of any of those sections
25 or this subdivision by reference, and the information is to be used
26 for employment, licensing, or certification purposes.

27 (2) Notwithstanding any other provision of law, whenever
28 state summary criminal history information is furnished pursuant
29 to paragraph (1), the Department of Justice shall disseminate the
30 following information:

31 (A) Every conviction of an offense rendered against the
32 applicant.

33 (B) Every arrest for an offense for which the applicant is
34 presently awaiting trial, whether the applicant is incarcerated or
35 has been released on bail or on his or her own recognizance
36 pending trial.

37 (C) Every arrest for an offense for which the Department of
38 Social Services is required by paragraph (1) of subdivision (a) of
39 Section 1522 of the Health and Safety Code to determine if an
40 applicant has been arrested. However, if the records of the

1 Department of Justice do not contain a disposition for an arrest,
2 the Department of Justice shall first make a genuine effort to
3 determine the disposition of the arrest.

4 (3) Notwithstanding the requirements of the sections
5 referenced in paragraph (1) of this subdivision, the Department
6 of Justice shall not disseminate information about an arrest
7 subsequently deemed a detention or an arrest that resulted in
8 either the successful completion of a diversion program or
9 exoneration.

10 (n) (1) This subdivision shall apply whenever state or federal
11 summary criminal history information, to be used for
12 employment, licensing, or certification purposes, is furnished by
13 the Department of Justice as the result of an application by an
14 authorized agency, organization, or individual pursuant to any of
15 the following:

16 (A) Paragraph (9) of subdivision (c), when the information is
17 to be used by a cable corporation.

18 (B) Section 11105.3 or 11105.4.

19 (C) Section 15660 of the Welfare and Institutions Code.

20 (D) Any statute that incorporates the criteria of any of the
21 statutory provisions listed in subparagraph (A), (B), or (C), or of
22 this subdivision, by reference.

23 (2) With the exception of applications submitted by
24 transportation companies authorized pursuant to Section 11105.3,
25 and notwithstanding any other provision of law, whenever state
26 summary criminal history information is furnished pursuant to
27 paragraph (1), the Department of Justice shall disseminate the
28 following information:

29 (A) Every conviction rendered against the applicant for a
30 violation or attempted violation of any offense specified in
31 subdivision (a) of Section 15660 of the Welfare and Institutions
32 Code. However, with the exception of those offenses for which
33 registration is required pursuant to Section 290, the Department
34 of Justice shall not disseminate information pursuant to this
35 subdivision unless the conviction occurred within 10 years of the
36 date of the agency's request for information or the conviction is
37 over 10 years old but the subject of the request was incarcerated
38 within 10 years of the agency's request for information.

39 (B) Every arrest for a violation or attempted violation of an
40 offense specified in subdivision (a) of Section 15660 of the

1 Welfare and Institutions Code for which the applicant is
2 presently awaiting trial, whether the applicant is incarcerated or
3 has been released on bail or on his or her own recognizance
4 pending trial.

5 (o) (1) This subdivision shall apply whenever state or federal
6 summary criminal history information is furnished by the
7 Department of Justice as the result of an application by an
8 authorized agency or organization pursuant to Section 261,
9 777.5, 4990, 6525, or 14409.2, of the Financial Code, or any
10 statute that incorporates the criteria of either of those sections or
11 this subdivision by reference, and the information is to be used
12 for employment, licensing, or certification purposes.

13 (2) Notwithstanding any other provision of law, whenever
14 state summary criminal history information is furnished pursuant
15 to paragraph (1), the Department of Justice shall disseminate the
16 following information:

17 (A) Every conviction rendered against the applicant for a
18 violation or attempted violation of any offense specified in
19 Section 777.5 of the Financial Code.

20 (B) Every arrest for a violation or attempted violation of an
21 offense specified in Section 777.5 of the Financial Code for
22 which the applicant is presently awaiting trial, whether the
23 applicant is incarcerated or has been released on bail or on his or
24 her own recognizance pending trial.

25 (p) (1) This subdivision shall apply whenever state or federal
26 criminal history information is furnished by the Department of
27 Justice as the result of an application by an agency, organization,
28 or individual not defined in subdivision (k), (l), (m), (n), or (o),
29 or by a transportation company authorized pursuant to Section
30 11105.3, or any statute that incorporates the criteria of that
31 section or this subdivision by reference, and the information is to
32 be used for employment, licensing, or certification purposes.

33 (2) Notwithstanding any other provisions of law, whenever
34 state summary criminal history information is furnished pursuant
35 to paragraph (1), the Department of Justice shall disseminate the
36 following information:

37 (A) Every conviction rendered against the applicant.

38 (B) Every arrest for an offense for which the applicant is
39 presently awaiting trial, whether the applicant is incarcerated or

1 has been released on bail or on his or her own recognizance
2 pending trial.

3 (q) All agencies, organizations, or individuals defined in
4 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
5 Department of Justice for subsequent arrest notification pursuant
6 to Section 11105.2. This subdivision shall not supersede sections
7 that mandate an agency, organization, or individual to contract
8 with the Department of Justice for subsequent arrest notification
9 pursuant to Section 11105.2.

10 (r) Nothing in this section shall be construed to mean that the
11 Department of Justice shall cease compliance with any other
12 statutory notification requirements.

13 (s) The provisions of Section 50.12 of Title 28 of the Code of
14 Federal Regulations are to be followed in processing federal
15 criminal history information.

16 ~~SEC. 5.—~~

17 *SEC. 17.* Section 11167 of the Penal Code is amended to
18 read:

19 11167. (a) Reports of suspected child abuse or neglect
20 pursuant to Section 11166 shall include the name, business
21 address, and telephone number of the mandated reporter; the
22 capacity that makes the person a mandated reporter; and the
23 information that gave rise to the reasonable suspicion of child
24 abuse or neglect and the source or sources of that information. If
25 a report is made, the following information, if known, shall also
26 be included in the report: the child's name, the child's address,
27 present location, and, if applicable, school, grade, and class; the
28 names, addresses, and telephone numbers of the child's parents
29 or guardians; and the name, address, telephone number, and other
30 relevant personal information about the person or persons who
31 might have abused or neglected the child. The mandated reporter
32 shall make a report even if some of this information is not known
33 or is uncertain to him or her.

34 (b) Information relevant to the incident of child abuse or
35 neglect may be given to an investigator from an agency that is
36 investigating the known or suspected case of child abuse or
37 neglect.

38 (c) Information relevant to the incident of child abuse or
39 neglect, including the investigation report and other pertinent
40 materials, may be given to the licensing agency when it is

1 investigating a known or suspected case of child abuse or
2 neglect.

3 (d) (1) The identity of all persons who report under this article
4 shall be confidential and disclosed only among agencies
5 receiving or investigating mandated reports, to the prosecutor in
6 a criminal prosecution or in an action initiated under Section 602
7 of the Welfare and Institutions Code arising from alleged child
8 abuse, or to counsel appointed pursuant to subdivision (c) of
9 Section 317 of the Welfare and Institutions Code, or to the
10 county counsel or prosecutor in a proceeding under Part 4
11 (commencing with Section 7800) of Division 12 of the Family
12 Code or Section 300 of the Welfare and Institutions Code, or to a
13 licensing agency when abuse or neglect in out-of-home care is
14 reasonably suspected, or when those persons waive
15 confidentiality, or by court order.

16 (2) No agency or person listed in this subdivision shall
17 disclose the identity of any person who reports under this article
18 to that person's employer, except with the employee's consent or
19 by court order.

20 (e) Notwithstanding the confidentiality requirements of this
21 section, a representative of a child protective services agency
22 performing an investigation that results from a report of
23 suspected child abuse or neglect made pursuant to Section 11166,
24 at the time of the initial contact with the individual who is subject
25 to the investigation, shall advise the individual of the complaints
26 or allegations against him or her, in a manner that is consistent
27 with laws protecting the identity of the reporter under this article.

28 (f) Persons who may report pursuant to subdivision (f) of
29 Section 11166 are not required to include their names.

30 ~~SEC. 6.—~~

31 *SEC. 18.* Section 11170 of the Penal Code is amended to
32 read:

33 11170. (a) (1) The Department of Justice shall maintain an
34 index of all reports of child abuse and severe neglect submitted
35 pursuant to Section 11169. The index shall be continually
36 updated by the department and shall not contain any reports that
37 are determined to be unfounded. The department may adopt rules
38 governing recordkeeping and reporting pursuant to this article.

39 (2) The department shall act only as a repository of reports of
40 suspected child abuse and severe neglect to be maintained in the

1 Child Abuse Central Index pursuant to paragraph (1). The
2 submitting agencies are responsible for the accuracy,
3 completeness, and retention of the reports described in this
4 section. The department shall be responsible for ensuring that the
5 Child Abuse Central Index accurately reflects the report it
6 receives from the submitting agency.

7 (3) Information from an inconclusive or unsubstantiated report
8 filed pursuant to subdivision (a) of Section 11169 shall be
9 deleted from the Child Abuse Central Index after 10 years if no
10 subsequent report concerning the same suspected child abuser is
11 received within that time period. If a subsequent report is
12 received within that 10-year period, information from any prior
13 report, as well as any subsequently filed report, shall be
14 maintained on the Child Abuse Central Index for a period of 10
15 years from the time the most recent report is received by the
16 department.

17 (b) (1) The Department of Justice shall immediately notify an
18 agency that submits a report pursuant to Section 11169, or a
19 prosecutor who requests notification, of any information
20 maintained pursuant to subdivision (a) that is relevant to the
21 known or suspected instance of child abuse or severe neglect
22 reported by the agency. The agency shall make that information
23 available to the reporting medical practitioner, child custodian,
24 guardian ad litem appointed under Section 326, or counsel
25 appointed under Section 317 or 318 of the Welfare and
26 Institutions Code, or the appropriate licensing agency, if he or
27 she is treating or investigating a case of known or suspected child
28 abuse or severe neglect.

29 (2) When a report is made pursuant to subdivision (a) of
30 Section 11166, the investigating agency, upon completion of the
31 investigation or after there has been a final disposition in the
32 matter, shall inform the person required to report of the results of
33 the investigation and of any action the agency is taking with
34 regard to the child or family.

35 (3) The Department of Justice shall make available to a law
36 enforcement agency, county welfare department, or county
37 probation department that is conducting a child abuse
38 investigation relevant information contained in the index.

39 (4) The department shall make available to the State
40 Department of Social Services or to any county licensing agency

1 that has contracted with the state for the performance of licensing
2 duties information regarding a known or suspected child abuser
3 maintained pursuant to this section and subdivision (a) of Section
4 11169 concerning any person who is an applicant for licensure or
5 any adult who resides or is employed in the home of an applicant
6 for licensure or who is an applicant for employment in a position
7 having supervisory or disciplinary power over a child or
8 children, or who will provide 24-hour care for a child or children
9 in a residential home or facility, pursuant to Section 1522.1 or
10 1596.877 of the Health and Safety Code, or Section 8714, 8802,
11 8912, or 9000 of the Family Code.

12 (5) For purposes of child death review, the Department of
13 Justice shall make available to the chairperson, or the
14 chairperson's designee, for each county child death review team,
15 or the State Child Death Review Council, information maintained
16 in the Child Abuse Central Index pursuant to subdivision (a) of
17 Section 11170 relating to the death of one or more children and
18 any prior child abuse or neglect investigation reports maintained
19 involving the same victims, siblings, or suspects. Local child
20 death review teams may share any relevant information regarding
21 case reviews involving child death with other child death review
22 teams.

23 (6) The department shall make available to investigative
24 agencies or probation officers, or court investigators acting
25 pursuant to Section 1513 of the Probate Code, responsible for
26 placing children or assessing the possible placement of children
27 pursuant to Article 6 (commencing with Section 300), Article 7
28 (commencing with Section 305), Article 10 (commencing with
29 Section 360), or Article 14 (commencing with Section 601) of
30 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
31 Code, Article 2 (commencing with Section 1510) or Article 3
32 (commencing with Section 1540) of Chapter 1 of Part 2 of
33 Division 4 of the Probate Code, information regarding a known
34 or suspected child abuser contained in the index concerning any
35 adult residing in the home where the child may be placed, when
36 this information is requested for purposes of ensuring that the
37 placement is in the best interests of the child. Upon receipt of
38 relevant information concerning child abuse or neglect
39 investigation reports contained in the index from the Department
40 of Justice pursuant to this subdivision, the agency or court

1 investigator shall notify, in writing, the person listed in the Child
2 Abuse Central Index that he or she is in the index. The
3 notification shall include the name of the reporting agency and
4 the date of the report.

5 (7) The Department of Justice shall make available to a
6 government agency conducting a background investigation
7 pursuant to Section 1031 of the Government Code of an
8 applicant seeking employment as a peace officer, as defined in
9 Section 830, information regarding a known or suspected child
10 abuser maintained pursuant to this section concerning the
11 applicant.

12 (8) (A) Persons or agencies, as specified in subdivision (b), if
13 investigating a case of known or suspected child abuse or
14 neglect, or the State Department of Social Services or any county
15 licensing agency pursuant to paragraph (4), or an investigative
16 agency, probation officer, or court investigator responsible for
17 placing children or assessing the possible placement of children
18 pursuant to paragraph (6), or a government agency conducting a
19 background investigation of an applicant seeking employment as
20 a peace officer pursuant to paragraph (7), to whom disclosure of
21 any information maintained pursuant to subdivision (a) is
22 authorized, are responsible for obtaining the original
23 investigative report from the reporting agency, and for drawing
24 independent conclusions regarding the quality of the evidence
25 disclosed, and its sufficiency for making decisions regarding
26 investigation, prosecution, licensing, placement of a child, or
27 employment as a peace officer.

28 (B) If Child Abuse Central Index information is requested by
29 an agency for the temporary placement of a child in an
30 emergency situation pursuant to Article 7 (commencing with
31 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
32 and Institutions Code, the department is exempt from the
33 requirements of Section 1798.18 of the Civil Code if compliance
34 would cause a delay in providing an expedited response to the
35 agency's inquiry and if further delay in placement may be
36 detrimental to the child.

37 (9) (A) Whenever information contained in the Department of
38 Justice files is furnished as the result of an application for
39 employment or licensing pursuant to paragraph (4) or (7), the
40 Department of Justice may charge the person or entity making

1 the request a fee. The fee shall not exceed the reasonable costs to
2 the department of providing the information. The only increase
3 shall be at a rate not to exceed the legislatively approved
4 cost-of-living adjustment for the department. In no case shall the
5 fee exceed fifteen dollars (\$15).

6 (B) All moneys received by the department pursuant to this
7 section to process trustline applications for purposes of Chapter
8 3.35 (commencing with Section 1596.60) of Division 2 of the
9 Health and Safety Code shall be deposited in a special account in
10 the General Fund that is hereby established and named the
11 Department of Justice Child Abuse Fund. Moneys in the fund
12 shall be available, upon appropriation by the Legislature, for
13 expenditure by the department to offset the costs incurred to
14 process trustline automated child abuse or neglect system checks
15 pursuant to this section.

16 (C) All moneys, other than that described in subparagraph (B),
17 received by the department pursuant to this paragraph shall be
18 deposited in a special account in the General Fund which is
19 hereby created and named the Department of Justice Sexual
20 Habitual Offender Fund. The funds shall be available, upon
21 appropriation by the Legislature, for expenditure by the
22 department to offset the costs incurred pursuant to Chapter 9.5
23 (commencing with Section 13885) and Chapter 10 (commencing
24 with Section 13890) of Title 6 of Part 4, and the DNA and
25 Forensic Identification Data Base and Data Bank Act of 1998
26 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1),
27 and for maintenance and improvements to the statewide Sexual
28 Habitual Offender Program and the DNA offender identification
29 file (CAL-DNA) authorized by Chapter 9.5 (commencing with
30 Section 13885) of Title 6 of Part 4 and the DNA and Forensic
31 Identification Data Base and Data Bank Act of 1998 (Chapter 6
32 (commencing with Section 295) of Title 9 of Part 1).

33 (c) The Department of Justice shall make available to any
34 agency responsible for placing children pursuant to Article 7
35 (commencing with Section 305) of Chapter 2 of Part 1 of
36 Division 2 of the Welfare and Institutions Code, upon request,
37 relevant information concerning child abuse or neglect reports
38 contained in the index, when making a placement with a
39 responsible relative pursuant to Sections 281.5, 305, and 361.3 of
40 the Welfare and Institutions Code. Upon receipt of relevant

1 information concerning child abuse or neglect reports contained
2 in the index from the Department of Justice pursuant to this
3 subdivision, the agency shall also notify in writing the person
4 listed in the Child Abuse Central Index that he or she is in the
5 index. The notification shall include the location of the original
6 investigative report and the submitting agency. The notification
7 shall be submitted to the person listed at the same time that all
8 other parties are notified of the information, and no later than the
9 actual judicial proceeding that determines placement.

10 If Child Abuse Central Index information is requested by an
11 agency for the placement of a child with a responsible relative in
12 an emergency situation pursuant to Article 7 (commencing with
13 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
14 and Institutions Code, the department is exempt from the
15 requirements of Section 1798.18 of the Civil Code if compliance
16 would cause a delay in providing an expedited response to the
17 child protective agency's inquiry and if further delay in
18 placement may be detrimental to the child.

19 (d) The department shall make available any information
20 maintained pursuant to subdivision (a) to out-of-state law
21 enforcement agencies conducting investigations of known or
22 suspected child abuse or neglect only when an agency makes the
23 request for information in writing and on official letterhead,
24 identifying the suspected abuser or victim by name. The request
25 shall be signed by the department supervisor of the requesting
26 law enforcement agency. The written requests shall cite the
27 out-of-state statute or interstate compact provision that requires
28 that the information contained within these reports shall be
29 disclosed only to law enforcement, prosecutorial entities, or
30 multidisciplinary investigative teams, and shall cite the criminal
31 penalties for unlawful disclosure of any confidential information
32 provided by the requesting state or the applicable interstate
33 compact provision. In the absence of a specified out-of-state
34 statute or interstate compact provision that requires that the
35 information contained within these reports shall be disclosed
36 only to law enforcement, prosecutorial entities, or
37 multidisciplinary investigative teams, and criminal penalties
38 equivalent to the penalties in California for unlawful disclosure,
39 access shall be denied.

(e) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 19. Section 12555 of the Penal Code is amended to read:

12555. (a) Any person who, for commercial purposes, purchases, sells, manufactures, ships, transports, distributes, or receives, by mail order or in any other manner, an imitation firearm except as authorized by this section shall be liable for a civil fine in an action brought by the city attorney or the district attorney of not more than ten thousand dollars (\$10,000) for each violation.

(b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt, by mail or in any other manner, of imitation firearms is authorized if the device is manufactured, purchased, sold, shipped, transported, distributed, or received for any of the following purposes:

(1) Solely for export in interstate or foreign commerce.

(2) Solely for lawful use in theatrical productions, including motion picture, television, and stage productions.

1 (3) For use in a certified or regulated sporting event or
2 competition.

3 (4) For use in military or civil defense activities, or ceremonial
4 activities.

5 (5) For public displays authorized by public or private schools.

6 (c) As used in this section, “imitation firearm” does not
7 include any of the following:

8 (1) A nonfiring collector’s replica that is historically
9 significant, and is offered for sale in conjunction with a wall
10 plaque or presentation case.

11 (2) A BB device, as defined in subdivision (g) of Section
12 12001.

13 (3) A device where the entire exterior surface of the device is
14 white, bright red, bright orange, bright yellow, bright green,
15 bright blue, bright pink, or bright purple, either singly or as the
16 predominant color in combination with other colors in any
17 pattern, as provided by federal regulations governing imitation
18 firearms, or where the entire device is constructed of transparent
19 or translucent materials which permits unmistakable observation
20 of the device’s complete contents, as provided by federal
21 regulations governing imitation firearms.

22 *SEC. 20. Section 13851 of the Penal Code is amended to*
23 *read:*

24 13851. (a) There is hereby established in the agency or
25 agencies designated by the Director of Finance pursuant to
26 Section 13820 a program of financial, training, and technical
27 assistance for local law enforcement, called the California Career
28 Criminal Apprehension Program. All funds made available to the
29 agency or agencies designated by the Director of Finance
30 pursuant to Section 13820 for the purposes of this chapter shall
31 be administered and disbursed by the executive director of ~~of~~ the
32 agency or agencies designated by the Director of Finance
33 pursuant to Section 13820.

34 (b) The executive director is authorized to allocate and award
35 funds to those local units of government or combinations thereof,
36 in which a special program is established in law enforcement
37 agencies that meets the criteria set forth in Sections 13852 and
38 13853.

39 (c) The allocation and award of funds shall be made upon
40 application executed by the chief law enforcement officer of the

1 applicant unit of government and approved by the legislative
2 body. Funds disbursed under this chapter shall not supplant local
3 funds that would, in the absence of the California Career
4 Criminal Apprehension Program, be made available to support
5 the apprehension of multiple or repeat felony criminal offenders.

6 (d) The Executive Director of the agency or agencies
7 designated by the Director of Finance pursuant to Section 13820
8 shall prepare and issue administrative guidelines and procedures
9 for the California Career Criminal Apprehension Program
10 consistent with this chapter.

11 (e) These guidelines shall set forth the terms and conditions
12 upon which the agency or agencies designated by the Director of
13 Finance pursuant to Section 13820 is prepared to offer grants of
14 funds pursuant to statutory authority. The guidelines do not
15 constitute rules, regulations, orders or standards of general
16 application.

17 *SEC. 21. Section 13353 of the Vehicle Code is amended to*
18 *read:*

19 13353. (a) If a person refuses the officer's request to submit
20 to, or fails to complete, a chemical test or tests pursuant to
21 Section 23612, upon receipt of the officer's sworn statement that
22 the officer had reasonable cause to believe the person had been
23 driving a motor vehicle in violation of Section 23140, 23152, or
24 23153, and that the person had refused to submit to, or did not
25 complete, the test or tests after being requested by the officer, the
26 department shall do one of the following:

27 (1) Suspend the person's privilege to operate a motor vehicle
28 for a period of one year.

29 (2) Revoke the person's privilege to operate a motor vehicle
30 for a period of two years if the refusal occurred within 10 years
31 of either (A) a separate violation of Section 23103 as specified in
32 Section 23103.5, or of Section 23140, 23152, or 23153, or of
33 Section 191.5 or paragraph (3) of subdivision (c) of Section 192
34 of the Penal Code, that resulted in a conviction, or (B) a
35 suspension or revocation of the person's privilege to operate a
36 motor vehicle pursuant to this section or Section 13353.2 for an
37 offense that occurred on a separate occasion.

38 (3) Revoke the person's privilege to operate a motor vehicle
39 for a period of three years if the refusal occurred within 10 years
40 of any of the following:

(A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses that occurred on separate occasions.

(C) Any combination of two or more of those convictions or administrative suspensions or revocations.

The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558.

(D) For the purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle Code or Penal Code.

(b) If a person on more than one occasion in separate incidents refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612 while driving a motor vehicle, upon the receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, the department shall disqualify the person from operating a commercial motor vehicle for the rest of his *or* her lifetime.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23612, the

1 department immediately shall notify the person in writing of the
2 action taken. The peace officer who serves the notice, or the
3 department, if applicable, also shall provide, if the officer or
4 department, as the case may be, determines that it is necessary to
5 do so, the person with the appropriate non-English notice
6 developed pursuant to subdivision (d) of Section 14100.

7 (d) Upon the receipt of the officer's sworn statement, the
8 department shall review the record. For purposes of this section,
9 the scope of the administrative review shall cover all of the
10 following issues:

11 (1) Whether the peace officer had reasonable cause to believe
12 the person had been driving a motor vehicle in violation of
13 Section 23140, 23152, or 23153.

14 (2) Whether the person was placed under arrest.

15 (3) Whether the person refused to submit to, or did not
16 complete, the test or tests after being requested by a peace
17 officer.

18 (4) Whether, except for a person described in subdivision (a)
19 of Section 23612 who is incapable of refusing, the person had
20 been told that his or her driving privilege would be suspended or
21 revoked if he or she refused to submit to, or did not complete, the
22 test or tests.

23 (e) The person may request an administrative hearing pursuant
24 to Section 13558. Except as provided in subdivision (e) of
25 Section 13558, the request for an administrative hearing does not
26 stay the order of suspension or revocation.

27 (f) The suspension or revocation imposed under this section
28 shall run concurrently with any restriction, suspension, or
29 revocation imposed under Section 13352, 13352.4, or 13352.5
30 that resulted from the same arrest.

31 (g) This section shall become operative on September 20,
32 2005.

33 *SEC. 22. Section 14601.2 of the Vehicle Code is amended to*
34 *read:*

35 14601.2. (a) No person shall drive a motor vehicle at any
36 time when that person's driving privilege is suspended or
37 revoked for a conviction of a violation of Section 23152 or 23153
38 if the person so driving has knowledge of the suspension or
39 revocation.

1 (b) Except in full compliance with the restriction, no person
2 shall drive a motor vehicle at any time when that person's driving
3 privilege is restricted, if the person so driving has knowledge of
4 the restriction.

5 (c) Knowledge of suspension or revocation of the driving
6 privilege shall be conclusively presumed if mailed notice has
7 been given by the department to the person pursuant to Section
8 13106. Knowledge of restriction of the driving privilege shall be
9 presumed if notice has been given by the court to the person. The
10 presumption established by this subdivision is a presumption
11 affecting the burden of proof.

12 (d) Any person convicted of a violation of this section shall be
13 punished as follows:

14 (1) Upon a first conviction, by imprisonment in the county jail
15 for not less than 10 days or more than six months and by a fine of
16 not less than three hundred dollars (\$300) or more than one
17 thousand dollars (\$1,000), unless the person has been designated
18 an habitual traffic offender under subdivision (b) of Section
19 23546, subdivision ~~(d)~~ *(b)* of Section 23550, or subdivision ~~(b)~~
20 *(d)* of Section 23550.5, in which case the person, in addition,
21 shall be sentenced as provided in paragraph (3) of subdivision (e)
22 of Section 14601.3.

23 (2) If the offense occurred within five years of a prior offense
24 that resulted in a conviction of a violation of this section or
25 Section 14601, 14601.1, or 14601.5, by imprisonment in the
26 county jail for not less than 30 days or more than one year and by
27 a fine of not less than five hundred dollars (\$500) or more than
28 two thousand dollars (\$2,000), unless the person has been
29 designated an habitual traffic offender under subdivision (b) of
30 Section 23546, subdivision (b) of Section 23550, or subdivision
31 (d) of Section 23550.5, in which case the person, in addition,
32 shall be sentenced as provided in paragraph (3) of subdivision (e)
33 of Section 14601.3.

34 (e) If a person is convicted of a first offense under this section
35 and is granted probation, the court shall impose as a condition of
36 probation that the person be confined in the county jail for at
37 least 10 days.

38 (f) If the offense occurred within five years of a prior offense
39 that resulted in a conviction of a violation of this section or
40 Section 14601, 14601.1, or 14601.5 and is granted probation, the

1 court shall impose as a condition of probation that the person be
2 confined in the county jail for at least 30 days.

3 (g) If any person is convicted of a second or subsequent
4 offense that results in a conviction of this section within seven
5 years, but over five years, of a prior offense that resulted in a
6 conviction of a violation of this section or Section 14601,
7 14601.1, or 14601.5 and is granted probation, the court shall
8 impose as a condition of probation that the person be confined in
9 the county jail for at least 10 days.

10 (h) Pursuant to Section 23575, the court shall require any
11 person convicted of a violation of this section to install a certified
12 ignition interlock device on any vehicle the person owns or
13 operates.

14 (i) Nothing in this section prohibits a person who is
15 participating in, or has completed, an alcohol or drug
16 rehabilitation program from driving a motor vehicle that is
17 owned or utilized by the person's employer, during the course of
18 employment on private property that is owned or utilized by the
19 employer, except an offstreet parking facility as defined in
20 subdivision (c) of Section 12500.

21 (j) This section also applies to the operation of an off-highway
22 motor vehicle on those lands to which the Chappie-Z'berg
23 Off-Highway Motor Vehicle Law of 1971 (Division 16.5
24 (commencing with Section 38000)) applies as to off-highway
25 motor vehicles, as described in Section 38001.

26 (k) This section shall become operative on September 20,
27 2005.

28 *SEC. 23. Section 22358.4 of the Vehicle Code is amended to*
29 *read:*

30 22358.4. Whenever a local authority determines upon the
31 basis of an engineering and traffic survey that the prima facie
32 speed limit of 25 miles per hour established by paragraph (2)-~~or~~
33 ~~(3)~~ of subdivision ~~(b)~~ (a) of Section 22352 is more than is
34 reasonable or safe, the local authority may, by ordinance or
35 resolution, determine and declare a prima facie speed limit of 20
36 or 15 miles per hour, whichever is justified as the appropriate
37 speed limit by ~~such~~ that survey. The ordinance or resolution shall
38 not be effective until appropriate signs giving notice of the speed
39 limit are erected upon the highway and, in the case of a state
40 highway, until the ordinance is approved by the Department of

1 Transportation and the appropriate signs are erected upon the
2 highway.

3 *SEC. 24. Section 23593 of the Vehicle Code is amended to*
4 *read:*

5 23593. (a) The court shall advise a person convicted of a
6 violation of Section 23103, as specified in Section 23103.5, or a
7 violation of Section 23152 or 23153, as follows:

8 “You are hereby advised that being under the influence of
9 alcohol or drugs, or both, impairs your ability to safely operate a
10 motor vehicle. Therefore, it is extremely dangerous to human life
11 to drive while under the influence of alcohol or drugs, or both. If
12 you continue to drive while under the influence of alcohol or
13 drugs, or both, and, as a result of that driving, someone is killed,
14 you can be charged with murder.”

15 (b) The advisory statement may be included in a plea form, if
16 used, or the fact that the advice was given may be ~~specified~~
17 *specified* on the record.

18 (c) The court shall include on the abstract of the conviction or
19 violation submitted to the department under Section 1803 or
20 1816, the fact that the person has been advised as required under
21 subdivision (a).

22 ~~SEC. 7.—~~

23 *SEC. 25.* Any section of any act, *except SB 1107*, enacted by
24 the Legislature during the 2005 calendar year that takes effect on
25 or before January 1, 2006, and that amends, amends and
26 rennumbers, adds, repeals and adds, or repeals any one or more of
27 the sections affected by this act, shall prevail over this act,
28 whether this act is enacted prior to, or subsequent to, the
29 enactment of this act. The repeal, or repeal and addition, of any
30 article, chapter, part, title, or division of any code by this act shall
31 not become operative if any section of any other act that is
32 enacted by the Legislature during the 2005 calendar year and
33 takes effect on or before January 1, 2006, amends, amends and
34 rennumbers, adds, repeals and adds, or repeals any section
35 contained in that article, chapter, part, title, or division.